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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

SYNOPSYS, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF LABOR,

Defendant.

Case No. _____

COMPLAINT

Administrative Procedure Act Case

INTRODUCTION

1. Synopsys bring this “reverse FOIA” action pursuant to the Administrative Procedure Act (APA), 5 U.S.C. §§ 701-06, and the Freedom of Information Act (FOIA), 5 U.S.C. § 552, against the U.S. Department of Labor (DOL) to prevent the disclosure of certain confidential and commercial documents and data relating to the composition of Synopsys’ workforce.

2. The materials at issue are the subject of a pending FOIA request and a subsequent FOIA action brought against DOL in this District. *See Ctr. for Investigative Reporting v. U.S.*

1 *Dep't of Labor (CIR v. DOL)*, Case No. 4:19-cv-01843-KAW. In particular, the FOIA requestors
 2 seek disclosure by DOL of Synopsys' 2016 EEO-1 Type 2 Consolidated Report (EEO-1 Reports).

3 3. The EEO-1 Reports contain confidential commercial data that Synopsys submitted
 4 to DOL via the Joint Reporting Committee in compliance with its federal-contractor reporting
 5 obligations. *See* 41 C.F.R. § 60-1.7(a). The EEO-1 Reports document the number of people
 6 Synopsys employs in the United States, broken down by gender, race, ethnicity, and job category.

7 4. Synopsys has at all times maintained that the EEO-1 Reports are exempt from
 8 disclosure pursuant to FOIA Exemption 4, which exempts from disclosure "trade secrets and
 9 commercial or financial information obtained from a person and privileged or confidential." 5
 10 U.S.C. § 552(b)(4).

11 5. Synopsys keeps the EEO-1 Report data highly confidential. It does not disclose
 12 the EEO-1 Reports externally except as required by law, and the EEO-1 Reports are only made
 13 available internally on a limited and need-to-know basis.

14 6. For purposes of FOIA, the data contained in the EEO-1 Reports is "commercial"
 15 pursuant to the term's ordinary meaning. The data contains confidential information concerning
 16 the number and gender, racial, and ethnic self-identifications of Synopsys' employees, as well as
 17 their allocation to various job categories. Each year's EEO-1 Report also contains the prior
 18 year's reported totals. If disclosed, this data would reveal aspects of Synopsys' business priorities
 19 and strategies, as well as Synopsys' recruitment and diversity efforts.

20 7. Synopsys brings this action for declaratory and injunctive relief under the
 21 Administrative Procedure Act to prevent DOL's disclosure of the EEO-1 Reports as arbitrary and
 22 capricious, an abuse of discretion, or otherwise not in accordance with law.

23 **JURISDICTION AND VENUE**

24 8. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1346,
 25 because this action arises under the laws of the United States, including the Administrative
 26 Procedure Act, 5 U.S.C. §§ 701-06, the Freedom of Information Act, 5 U.S.C. § 552, and the
 27 Declaratory Judgment Act, 28 U.S.C. §§ 2201-02.

28 9. Venue is proper in this district under 28 U.S.C. §§ 1391, 1402. Synopsys'

1 principal place of business is in this district.

2 **INTRADISTRICT ASSIGNMENT**

3 10. Assignment to the Oakland Division is proper pursuant to Local Rule 3-2(c) and
4 (d) because a substantial portion of the events giving rise to this action occurred in Alameda
5 County.

6 **PARTIES**

7 11. Plaintiff Synopsys, Inc. is a publicly traded company with its principal place of
8 business in Mountain View, California. Synopsys is a “person” within the meaning of 5 U.S.C.
9 § 551(2).

10 12. Defendant DOL is a department of the executive branch of the United States
11 government and an “agency” within the meaning of 5 U.S.C. § 552(f)(1). DOL has possession
12 and control over the EEO-1 Reports.

13 **PARTIES OF INTEREST**

14 13. The Center for Investigative Reporting (“the Center”) is a nonprofit organization
15 established under the laws of the State of California with a principal place of business in
16 Emeryville, California. Will Evans (“Evans”) is an employee of the Center.

17 **FACTUAL ALLEGATIONS**

18 14. Synopsys is a high-tech software company that provides innovative Electronic
19 Design Automation (EDA) solutions for the semiconductor industry. EDA generally refers to
20 using computer software to design, verify, simulate, and manufacture electronic circuits.

21 15. The high-tech software industry is highly competitive, especially with respect to
22 the recruitment and retention of skilled employees. Synopsys invests considerable time and
23 resources in its recruitment and retention efforts. For Synopsys as a software company, success
24 in those efforts is critical to its overall commercial success.

25 16. A key component of Synopsys’ recruitment and retention efforts is the diversity of
26 Synopsys’ workforce. As described in the declaration of Sarah Lee, Synopsys invests
27 considerably in maintaining and strengthening the diversity of its workforce, and that diversity
28 contributes to Synopsys’ overall commercial success. *See* Ex. A (Lee Decl.).

1 17. As a federal contractor with over 50 employees, Synopsys annually submits data
2 concerning its workforce to the government by filing, among other things, the EEO-1 Reports
3 with the Joint Reporting Committee, which collects that data on behalf of DOL and the Equal
4 Employment Opportunity Commission (EEOC). The EEO-1 Report at issue here covers
5 Synopsys' data for 2016.

6 18. The data contained in the EEO-1 Reports is obtained from Synopsys' employees
7 with the express assurance of confidentiality. As described in the declaration of Sarah Lee,
8 Synopsys treats this information as highly sensitive and commercial, restricting access even
9 within the company to a select few individuals with a need to access it. *See* Ex. A.

10 19. Synopsys provided the EEO-1 Report to the government pursuant to a
11 longstanding understanding that the information would remain confidential. Indeed, Synopsys
12 relies on the government's assurances of confidentiality in submitting its EEO-1 Reports. For
13 example, the EEOC publishes an instruction booklet wherein the government commits to "protect
14 the confidentiality of the EEO-1 data to the maximum extent possible consistent with FOIA and
15 the Trade Secrets Act." Moreover, DOL regulations prohibit disclosure of confidential
16 commercial information except in compliance with FOIA and additional notification procedures.
17 *See* 29 C.F.R. § 70.26.

18 20. The EEO-1 Reports reveal commercially sensitive information that is kept highly
19 confidential by Synopsys and would, if disclosed, cause competitive harm to Synopsys.
20 Specifically, disclosure of these materials would:

- 21 a. Permit competitors to identify changes to Synopsys' workforce over time,
22 including changes within certain job categories and changes in the balance of
23 domestic and international employees. Such data could, in turn, reveal
24 changes in business goals and commercial strategies, as well as the impact of
25 corporate mergers and acquisitions.
- 26 b. Permit competitors to target their recruitment of Synopsys employees,
27 especially diverse candidates.
- 28 c. Permit competitors to determine employee's confidential and highly sensitive

self-identifications as to gender, race, and ethnicity.

d. Chill future self-identification by employees no longer willing to participate in such surveys in light of public disclosure of the EEO-1 data.

e. Undermine Synopsys' internal efforts to build and maintain a diverse and talented workforce, which in turn would undermine Synopsys' commercial success.

21. In compliance with FOIA and DOL regulations, when the Center and Evans sought disclosure of the Synopsys EEO-1 Report, DOL both notified Synopsys and refused to disclose the information as protected commercial information.

22. The Center and Evans then brought suit seeking to compel disclosure of the EEO-1 Reports. On December 10, 2019, in that suit, the court held that the information at issue did not fall within FOIA Exemption 4 because it was not "commercial." *CIR v. DOL*, Case No. 4:19-cv-01843-KAW, 2019 WL 6716352 (N.D. Cal. Dec. 10, 2019). The court appeared to reach that conclusion because (1) disclosure of the data would not cause the provider of the data likely commercial harm, *see id.* at *3-6, and (2) the data is too general and did not pertain "to specific positions or departments," *id.* at *6.

23. On January 28, 2020, DOL announced that it was not going to use its resources to appeal the order issued in *CIR v. DOL*, and that absent a stay or other court order it would be compelled to disclose the data sought no later than February 10, 2020.

COUNT I – VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

24. Synopsys repeats and incorporates herein by reference the allegations of paragraphs 1 through 23 of its Complaint.

25. The EEO-1 Reports and the data contained therein constitute "commercial . . . information obtained from a person and privileges or confidential" within the meaning of FOIA Exemption 4, and they are therefore exempt from disclosure.

26. The EEO-1 Reports contain sensitive commercial data.

27. The EEO-1 Report data is kept highly confidential by Synopsys.

28. Disclosure of the EEO-1 Reports would cause commercial and competitive harm

1 to Synopsys.

2 29. DOL recognized that disclosure was exempt under Exemption 4, but is now poised
3 to disclose based on an erroneous construction of “commercial” information that cannot be
4 squared with the recent the Supreme Court decision regarding Exemption 4, *Food Marketing*
5 *Institute v. Argus Leader Media*, 139 S. Ct. 2356, 2363-66 (2019), which expressly rejected the
6 commercial harm test.

7 30. Disclosure of the EEO-1 Reports despite the applicability of FOIA Exemption 4
8 would be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law”
9 within the meaning of the APA, 5 U.S.C. § 706(2)(A).

10 **REQUEST FOR DECLARATORY JUDGMENT**

11 31. Synopsys repeats and incorporates herein by reference the allegations of
12 paragraphs 1 through 23 of its Complaint.

13 32. Because the EEO-1 Reports are exempt from disclosure under FOIA Exempt 4,
14 DOL’s disclosure of the EEO-1 Reports would be arbitrary and capricious, an abuse of discretion,
15 or otherwise not in accordance with law, and the Court should declare that:

16 a. The EEO-1 Reports are exempt from disclosure under FOIA Exemption 4.

17 b. DOL’s disclosure of the EEO-1 Reports would be arbitrary and capricious, an
18 abuse of discretion, or otherwise not in accordance with law.

19 **REQUEST FOR A PERMANENT INJUNCTION**

20 33. Synopsys repeats and incorporates herein by reference the allegations of
21 paragraphs 1 through 23 of its Complaint.

22 34. The EEO-1 Reports are exempt from disclosure under FOIA Exemption 4, and
23 DOL’s disclosure of the EEO-1 Reports would be arbitrary and capricious, an abuse of discretion,
24 or otherwise not in accordance with law. Therefore, Synopsys will prevail on the merits of this
25 action.

26 35. Release of the EEO-1 Reports will irreparably injure Synopsys by permanently
27 making public the EEO-1 Report data and by exposing Synopsys to competitive harm.

28 36. DOL and the public at large will not be harmed by withholding the EEO-1

1 Reports, and any such harm they would suffer is substantially outweighed by the irreparable
2 injury certain to occur to Synopsys.

3 37. The public interest is served by ensuring that Synopsys and other similarly situated
4 companies are not subject to having their confidential commercial information involuntarily
5 disclosed and by protecting the confidential and personal information of such companies'
6 employees.

7 38. Therefore, the Court should permanently enjoin DOL from disclosing the EEO-1
8 Reports.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Synopsys respectfully requests that judgment be entered against
11 Defendant U.S. Department of Labor and that this Court:

12 A. Declare that DOL's disclosure of the EEO-1 Reports would be arbitrary and
13 capricious, an abuse of discretion, or otherwise not in accordance with law;

14 B. Permanently enjoin DOL from disclosing the EEO-1 Reports; and

15 C. Grant such other and further relief as may be just and proper.

16 Dated: January 30, 2020

ORRICK, HERRINGTON & SUTCLIFFE

19 By: /s/ Denise M. Mingrone
20 DENISE M. MINGRONE
21 Attorneys for Plaintiff, SYNOPSYS, INC.